

IN THE FOURTH JUDICIAL DISTRICT COURT, FOR UTAH COUNTY, UTAH.

PROVO RESERVOIR COMPANY,  
a corporation, et al,

Plaintiff,

vs.

PROVO CITY,  
a municipal corporation, et al,

Defendant.

ANSWER AND

AFFIRMATIVE RELIEF

No. 2886.

Now comes the defendant, Julia M. Davis, and answering the complaint on file herein, and which is numbered 2886, denies each and every allegation contained therein in the same manner as if every paragraph and allegation were specifically traversed and denied. And the said Julia M. Davis alleges that since the commencement of this action that she has sold and transferred to one John E. Berg, of Utah County all her lands and all other property heretofore owned by her in Wasatch County, Utah, and she therefore requests the said John E. Berg to appear and answer herein in her name, place and stead, in all proceedings in the above entitled action.

And the said John E. Berg answers herein and adopts the matter hereinbefore alleged in the answer of said Julia M. Davis and as he is the real party in interest herein, he asks leave to be substituted in the place and stead of said Julia M. Davis as impleaded in this action; and denies all the allegations in said complaint.

Further Answering, and by way of Affirmative Relief, the defendant, John E. Berg, alleges:

1. That about the month of May, 1916, he made a contract to purchase 181 acres of land from the above named, Julia M. Davis, with all the appurtenances in connection therewith, including all the Water Rights theretofore has and enjoyed by the said Julia M. Davis and Ella Walker, and which said Water Rights and waters were used by the said Julia M. Davis, as defendant's Grantor herein had used for domestic, culinary, and irrigating purposes, upon said land. And that on or about the 10th day of October, 1916, this defendant bought

said lands and water rights from the said Julia H. Davis, and took her deed in Warranty therefor, and paid her Four Thousand Dollars therefor.

2. That by a certain judgment and Decree of the Fourth Judicial District Court for Wasatch County, Utah, made and entered about the month of May, 1899, and known as the Fulton Decree, one of this defendant's predecessors in interest, to-wit: the said Ella Walker, was by said decree awarded an amount of water and water rights to irrigate said land, the exact amount thereof this defendant cannot state, but he herewith asks leave to insert said amount in this answer as soon as the same can be ascertained.

3. Defendant further alleges that on information and belief, that since the said Fulton Decree was entered, that defendant's grantors and predecessors in interest has broke up, cultivated, irrigated and raised crops on more than twenty-five acres of land in said 181 acres, and that they always had plenty of water to irrigate the same and all the lands that were previously broken up and cultivated, and defendant avers that on the early settlement and cultivation of said land, his predecessors in interest were awarded by agreement sufficient water to irrigate one hundred acres of said land.

4. That the predecessors of defendant always had plenty of water to irrigate said land both before and ever since the Fulton Decree.

5. That the following is a correct and true description of the said one hundred and eighty-one acres of land, to-wit: The East  $1/2$  of the Southeast  $1/4$ , the Southeast  $1/4$  of the Northeast  $1/4$ , of Section 33, the Southwest  $1/4$  of the Northwest  $1/4$  of Section 34, Township 2, South of Range 5, East of the Salt Lake Base and Meridian, and 21 acres adjoining the above described tract of land, described as follows: Beginning at the southeast corner of the Southwest  $1/4$  of the Northeast quarter of Section 33 and running thence North West 42 rods, thence 80 rods, thence East 42 rods, thence South 60 rods to place of beginning, together with all water rights and appurtenances belonging thereto, all of said land above described is

situated and being in Wasatch County, Utah.

5. That defendant has been compelled to pay out more than the sum of One Hundred Dollars for Attorney's fee and other expenses by reason of the wrongful act of the plaintiff herein in bringing this action, and he will be compelled to pay at least Two Hundred and Fifty Dollars more for Attorney's fee and other expenses in defending said action at Provo, in Utah County, Utah, before said action is terminated.

WHEREFORE, defendant prays Judgment:

I.

That plaintiff take nothing by its said suit.

II.

That defendant be awarded sufficient water and water rights to irrigate his said land and for culinary and all domestic purposes, to the extent that he and his grantor and predecessors in interest always had and enjoyed upon said land both before and after the Fulton Decree of 1899, and up to and including the year 1916.

III.

That defendant be awarded his costs and Attorney's fee to the amount of Three Hundred and Fifty Dollars, as costs of this suit.

Henry Shields  
Attorney for Defendant.

STATE OF UTAH,       \*  
                              \* ss.  
County of Summit.    \*

H E N R Y   S H I E L D S

being by me first duly sworn, and on his oath says, That he is the Attorney for John E. Berg, the substituted defendant, in the above entitled action, that he read the foregoing Answer and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true. That he verifies this answer on behalf of the defendant, John E. Berg, for the reason that he does not reside in the County where said Attorney resides.



Subscribed and sworn to before me this 23 day of December

Henry Shields  
NOTARY PUBLIC.

No 288

Miss Cunningham

12. Rf

Proctor, N. A.  
1915

Miss Cunningham  
Julia M. Harris, Esq.  
John E. Birney

Copy received this  
36th day of Dec  
1916

Wm. E. Harris  
Care of Mr. Birney  
P. B.

IN DIST. COURT  
UTAH CO. OF PAUL

\* FILED \*

DEC 2 - 1916

E. W. Gifford, Cl.  
Do: